CF0000110136

IN THE HIGH COURT OF M.P. : AT JABALPUR

M.P.NO. : 148 /1993

PETITIONER : Prakash Kumar Tiwari, S/o Shri Moleram Tiwari, working as Daily-Skilled Labourer in Watch & Ward, Panabaras Pariyojna Mandal Khadgaon Rang, District-Rajnandgaon.

-Versus-

RESPONDENTS : 1. State of M.P. through Secretary Deptt. of Forest, Vallabh Bhawan Bhopal.

2. Managing Director, M.P.Rajya-Van Vikas-Nigam, Pandhanan 5th Floor, Malviya-Nagar, Bhopal.

PETITION UNDER ARTICLE 226/227 CONSTITUTION OF I N D I A

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 148 of 1993

Petitioner : Prakash Kumar Tiwari

Versus

Respondents : State of Chhattisgarh & another

Shri A. K. Pandey, Advocate for the petitioner.

Shri Arun Sao, Govt. Advocate for the respondents.

O R D E R

(21st November, 2006)

1. The petitioner was appointed as daily wage skilled worker by the respondent No.2 in February, 1980. The petitioner was not considered for regularization despite the fact that some other similarly situated daily wagers have been regularized.

2. The petitioner by this petition seeks regularization with effect from the initial appointment as daily wage worker. The petition is vague and lack relevant materials so asto indicate whether the petitioner has been continuing as daily wager till date.

3. According to the petitioner the petitioner has made representation on 26.2.1992 (Annexure P/4) to the respondent No.2 for regularizing his services. It appears that he could not be regularized. No reasons have been stated, either in the pleadings or in submissions made by learned counsel for the petitioner. It is admitted fact that the appointment of the petitioner was not in accordance with law and dehors the constitutional scheme. The appointment of the petitioner was not through the advertisement or by inviting any application through any other means from all eligible candidates. It is well settled principle of law that the daily wagers, temporary or ad hoc employees

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have no right to the post seeking regularization and grant of regular pay scale, if their appointments were dehors the constitutional scheme or the rules made under the proviso to Article 309 of the Constitution of India.

4. By order dated 15.1.1993 passed by the High Court the petitioner is continuing as daily wager.

5. The Constitutional bench of the Supreme Court in the case of **Secretary, State of Karnataka & others Vs. Umadevi (3) and others**[1], in para 44 has held as under:-

> *"44. ..... It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality."*

6. In the case of ***Secretary, State of Karnataka and others*** *(Supra)* the Supreme Court has laid down clear enunciation of law which was followed later on in various decisions by the Supreme Court. Some are ***Accounts Officer (A&I) A.P.SRTC and others vs. P. Chandra Sekhara Rao and others***[2], ***Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others***[3], ***Nagar Mahapalika (now Municipal Corpn.) vs. State of U.P. and others***[4] and ***U.P. State Road Transport Corporation vs. Man Singh***[5].

7. In the case of ***Secretary, State of Karnataka and others*** (Supra), the Supreme Court observed as under :-

> *"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of*

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time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."

8. For the reasons above-stated and as per the dicta laid down by the Supreme Court, the petitioner is not entitled to absorption/permanent status or regularization in the service and regular pay scale.

9. This petition is accordingly dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2006) 4 SCC 1
2 (2006) 7 SCC 488
3 (2006) 7 SCC 684
4 2006 AIR SCW 2497
5 2006 AIR SCW 5159

Thakur